IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1092 OF 2001

University of Mumbai ..Petitioner.

Vs.

Shri. S.D. Patel & Ors. ..Respondents.

....

Mr. B.V. Phadnis h/f Mr. R.A. Rodrigues for the Petitioner.

Mr. M.M. Vahi with Mr. Manish Mistry for Respondent No.1.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

28th January, 2005.

ORAL JUDGMENT :

1. This Petition is directed against an order passed by the Industrial Court on 16th December, 1999 by which the complaint filed by the First Respondent under Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was allowed and the Petitioner was directed to make the

First Respondent a permanent employee in the post of Laboratory Attendant from the date of the passing of the order.

2. The First Respondent was appointed as a Laboratory Attendant by the Mumbai University in the University Department of Chemical Technology (UDCT) with effect from 29th October, 1993. Immediately prior to the Petitioner the post was held by one S.G. Patil whose services were terminated. The initial appointment of the First Respondent was admittedly on a purely temporary basis for a period of six months or till a permanent appointment/arrangement was made. On 18th April, 1994 the services of the First Respondent were extended for a further period of 45 days to expire on 27th April, 1994. With effect from 28th April, 1994 there was further extension of 45 days or until a permanent arrangement was made by the university.

3. In his complaint before the Industrial Court the First Respondent claimed that he was duly qualified; that the post was vacant and that there was a clear vacancy. The First Respondent sought

to challenge the order of termination dated 13th June, 1994 and sought an order of absorption as a Laboratory Attendant as a permanent employee. The complaint before the Industrial Court was filed under Item Nos.1(b) and (d) of Schedule IV and Item 6 thereof. The University filed its written statement and contested the claim of the First Respondent to absorption. The University contended that the appointment was only on a temporary basis and that although the post was vacant and was a permanent post, a temporary appointment was made until the prescribed procedure was followed for filling up the post and the roster position was ascertained. The University denied that it had committed any unfair labour practice under item 6 of Schedule IV. In so far as the complaint under item 1 was concerned, the University specifically objected to the maintainability of the complaint on the ground that it was the Labour Court which would have the jurisdiction.

4. The parties adduced evidence. By the impugned order dated 16th December, 1999 the Industrial Court allowed the complaint under item 6 of Schedule IV and directed that the First Respondent

be granted the benefit of permanency with effect from the date of the order.

5. Counsel appearing on behalf of the University submitted that ex facie the complaint did not make out any case of the commission of an unfair labour practice under item 6 of Schedule IV. In the present case, the First Respondent was appointed as a temporary employee for a short duration. The University is required to follow the prescribed procedure for filling up its posts on a permanent basis and the Industrial Court, it was submitted, was entirely in error in granting the benefit of permanency. On the other hand, counsel for the First Respondent supported the order of the Industrial Court submitting that the University had without any justification whatsoever appointed the First Respondent as a temporary employee. These submissions can now be considered.

6. The complaint which was filed by the First Respondent was under item 1(b), (d) and 6 of Schedule IV to the Act. The Industrial Court was correct in holding that by virtue of Section 5(d) of the Act it had no jurisdiction to entertain the

complaint in so far as it related to item 1. In so far as item 6 of Schedule IV is concerned, the essence of an unfair labour practice therein is in the employer employing employees as badlis, casuals or temporaries and continuing them for years together with the object of depriving them of the status and privileges of permanent employees. The complaint as it stands ex facie does not contain recitals or allegations of the nature as would warrant the exercise of the jurisdiction with reference to Item 6 of Schedule IV. Be that as it may, the University is a statutory body governed by the provisions of the Universities Act, 1994. The Industrial Court was conscious of the fact that the university was bound by the provisions of the Standard Code. The Industrial Court held that it was no doubt true that the appointment of the First Respondent was initially for a period of six months which was subsequently extended. The Industrial Court, it would appear from the order, was guided by the equitable consideration that the name of the First Respondent who was 27 years of age was still on the register of the Employment Exchange and the post that was held by the First Respondent was of a permanent nature. The Industrial Court was of the

view that the 'ends of justice would be served' if the First Respondent was made permanent from the date of the passing of the order.

7. The Industrial and the Labour Courts exercising jurisdiction under the provisions of the Act must be conscious of the fact that this jurisdiction is with reference to a specific statutory provision under which the province of the Court lies in determining as to whether an unfair labour practice has been committed. The Industrial Court does not have an uncharted discretion to exercise irrespective of whether the commission of an unfair labour practice is established. The appointment of the First Respondent was specifically on a short duration temporary basis and there is hence no question of such an appointment being continued for years with the object of depriving an employee of the status of a permanent employee. The university as a statutory body has to make appointments to permanent posts in accordance with law and a back door entry of the nature that would result in the present case is manifestly not warranted in law. Considering the matter from any perspective, the Industrial Court was in my view clearly not

justified in granting the relief of permanency to an employee who was recruited on a temporary basis for a short term and whose appointment was extended again for a stipulated duration. The commission of an unfair labour practice was not established either on the basis of the pleadings or the evidence. The impugned order of the Industrial Court is unsustainable and has to be quashed and set aside.

8. Counsel appearing on behalf of the First Respondent submitted that the University has granted the benefits of permanency to other persons similar to the First Respondent who are recruited on a temporary basis. This is an oral statement across the Bar with no basis in the pleadings. But, if this be so, the First Respondent would be at liberty to make his representation which shall be considered at the appropriate level in accordance with law. In so far as the present proceedings are concerned, the Petition is disposed of by quashing the impugned order dated 16th December, 1999 passed by the Industrial Court. The Petition is accordingly disposed of. There shall be no order as to costs.